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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CARLOS CACIQUE,

Applicant,

vs.

**METRO PAD & FUSING; OAK RIVER
INSURANCE; SOUTHERN INSURANCE
COMPANY,**

Defendant,

**SAN DIEGO IMAGING, INC., dba
CALIFORNIA IMAGING SOLUTIONS,**

Lien Claimant.

Case Nos. **ADJ7483398 MF**
ADJ7117818
ADJ7117817
(Los Angeles District Office)

**OPINION AND ORDER GRANTING
LIEN CLAIMANT'S
PETITION FOR RECONSIDERATION
AND DECISION
AFTER RECONSIDERATION**

Lien claimant San Diego Imaging, Inc., doing business as California Imaging Solutions (CIS) seeks reconsideration of the July 14, 2015 Joint Findings And Order of the workers' compensation administrative law judge (WCJ) as served by mail on July 15, 2015. The WCJ found in pertinent part that CIS "was "subject to the registration requirements of Business [and] Professions Code Section 22450," and that "in the absence of registration," defendant has no liability for the CIS lien and it was disallowed.

Applicant's claims of industrial injury to multiple body parts while working for defendant as a machine operator from December 2006 to December 2008 (ADJ483398), on June 19, 2007 (ADJ7117817), and on April 12, 2007 (ADJ7117818), were previously settled by compromise and release with a lump sum payment of \$10,000, as approved by a different WCJ on September 17, 2012. As part of the settlement, defendant agreed to pay, adjust or litigate lien claims.

CIS contends that its lien should not have been disallowed because at the time it provided the photocopying services at issue it was exempt from the registration requirement of Business and

1 Professions Code section 22450 by Business and Professions Code section 22451(b), which creates an
2 exception for an agent or independent contractor of a member of the State Bar.¹

3 An answer was received from defendant. The WCJ provided a Report And Recommendation On
4 Petition For Reconsideration (Report) recommending that reconsideration be denied.

5 Reconsideration is granted and the WCJ's July 14, 2015 decision is reversed as our Decision
6 After Reconsideration.² CIS established that it was exempt from the Business and Professions Code
7 section 22450 registration requirements by Business and Professions Code section 22451(b) because at
8 the time the photocopy services were provided it was acting as an agent or independent contractor of
9 applicant's attorney who is a member of the State Bar.

10 BACKGROUND

11 As set forth in the earlier December 6, 2014 Decision (see footnote 2), and as shown by the
12 current record, CIS photocopied documents in this case at the request of Hinden & Breslavsky, the law
13 firm representing applicant, and pursuant to work orders provided by that law firm. (Lien Claimant's
14 Exhibits 1 and 2.) Following the settlement of applicant's claim by compromise and release as set forth
15 above, CIS sought payment for its services from defendant. After receiving partial payment of \$302.93,
16 CIS filed its lien claim in the amount of \$3,235.48 on October 11, 2012. The lien was initially tried on
17 July 29, 2014. At that time, the parties stipulated that the reasonable value of the services provided by
18 CIS is \$1,000.

19 Following the trial on July 29, 2014, the WCJ issued a September 24, 2014 Joint Findings And
20 Order disallowing the lien in its entirety, based upon the finding that CIS was "subject to the registration
21

22
23 ¹ Business and Professions Code section 22451(b) exempts "[a]member of the State Bar or his or her employees,
24 agents, or independent contractors" from the registration requirements of Business and Professions Code section 22450,
25 which in turn provides in pertinent part as follows: "A professional photocopier is any person who for compensation obtains
26 or reproduces documents authorized to be produced...and who, while engaged in performing that activity, has access to the
27 information contained therein. A professional photocopier shall be registered pursuant to this chapter by the county clerk of
the county in which he or she resides or has his or her principal place of business, and in which he or she maintains a branch
office."

² This case was previously before the Appeals Board when the panel at that time issued its December 6, 2014 Opinion
And Decision After Reconsideration (December 6, 2014 Decision) as discussed herein. Commissioner Brass was not
available to participate on the current panel and Commissioner Razo was appointed to take his place.

1 requirements of Business & Professions Code Section 22450,” and that in the absence of proof of such
2 registration “defendant has no liability for the lien.”

3 In the panel’s earlier December 6, 2014 Decision, the WCJ’s earlier September 24, 2014 Joint
4 Findings And Order disallowing the CIS lien was rescinded and the case was returned to the trial level
5 for development of the record and a new decision by the WCJ on whether CIS was exempt from the
6 registration requirements pursuant to Business and Professions Code section 22451(b) at the time it
7 provided the photocopying services. The panel further wrote in its December 6, 2014 decision as
8 follows: “If CIS proves that it was exempt from the registration requirement by Business and
9 Professions Code section 22451(b), it is entitled to the reasonable fee that was stipulated at the earlier
10 trial.”

11 The issue of lien claimant’s entitlement to payment of its lien came on again for trial on May 28,
12 2015. As shown by the “Further Minutes of Hearing” (MOH) from that date,³ the parties again stipulated
13 at that time that the reasonable value of the services provided by CIS is \$1,000, and stipulated that the
14 issues to be tried was whether CIS was “barred” from pursuing the lien, or was “exempt” from the
15 Business and Professions Code Section 22450 registration requirement by Business and Professions
16 Code Section 22451(b). (MOH, 2:19-21; 3:2-6.)

17 In support of its contention that it provided services as an independent contractor of a member of
18 the State Bar as described in Business and Professions Code Section 22451(b), CIS place three work
19 orders from its business records into evidence that show that the law firm representing applicant
20 requested the copying of documents in this case on December 11, 2009, March 30, 2010 and May 25,
21 2010 (Lien Claimant’s Exhibit 1.) CIS also placed into evidence an April 10, 2015 letter on the
22 letterhead of Hinden & Breslavsky and carrying the signature of Barry Harris Hinden, Esq. (Lien
23 Claimant’s Exhibit 2.)

24 According to the official State Bar website, Barry Harris Hinden (State Bar Number 61509) is an
25 active member of the State Bar whose official address is the same as the address shown on the letterhead
26

27 ³ The cover page on the “Further Minutes Of Hearing” shows an erroneous trial date of May 28, 2014.

1 of the April 10, 2015 letter for Hinden & Breslavsky.⁴ (Lien Claimant's Exhibit 2.) The caption of that
2 April 10, 2015 letter references this case and its claim numbers and is addressed "To Whom It May
3 Concern." (*Id.*) The April 10, 2015 letter states in full in the body as follows:

4 This letter will confirm that the Law Offices Of Hinden & Breslavsky hired
5 San Diego Imaging dba; California Imaging as an independent contractor
6 for [sic] photocopy documents and/or records on the above captioned
7 Workers Compensation cases.

8 The requested locations are obtained via legally issued subpoenas and are
9 deemed necessary for the development of the Applicant's claim in this
10 matter. We believe these documents are necessary from a discovery
11 standpoint in that these documents provide the necessary information
12 needed to fully explore and explain the Applicant's case before the WCAB.

13 If you have any questions or need additional information, please do not
14 hesitate to contact the undersigned.

15 The only evidence placed into the record by defendant at the May 28, 2015 trial were copies of
16 billings sent to it by CIS and a copy of a settlement offer made by CIS. (Defendant's Exhibit A.) After
17 taking the matter under submission, the WCJ issued his July 14, 2015 decision disallowing the lien. The
18 WCJ explains the reasons for his decision in his Report in pertinent part as follows:

19 First, petitioner asserts that the fact that there is no evidence herein to rebut
20 Exhibit 1 requires a finding that they constitute a preponderance of
21 evidence that petitioner was the attorney's independent contractor...

22 Petitioner was not relieved of the burden of proof as to independent
23 contractor status...

24 The after-the-fact statement of the attorney making the conclusory
25 statement in a letter that he engaged petitioner as independent contractor
26 does not demonstrate that petitioner's status was such that the statutory
27 exception applied...

Perhaps more important is the proper interpretation of the statute providing
for the exception to the registration and bonding requirement.

Petitioner's position would result in any lawyer and any person or entity
avoiding registration and bonding by simply calling themselves hirer and
independent contractor...

This would defeat the purpose of requiring registration and bonding, unless
it can be shown that *at the time of the services*, the member of the State Bar
engaged the photocopier under circumstances which include financial and
criminal responsibility for the actions of the photocopier in connection with

⁴ Pursuant to Evidence Code section 452(h), judicial notice is taken of the following State Bar web site as of
September 21, 2015: <<http://members.calbar.ca.gov/fal/Member/Detail/61509>>

1 the services. This is consistent with the lawyer's responsibility for the
2 actions of an 'agent' or an 'employee,' also excepted from bonding and
registration by [Business and Professions Code] Section 22451.

3 In this case, petitioner did not establish that it was an 'independent
4 contractor' of [applicant's lawfirm] Hinden & Breslavsky within the
5 meaning of Business and Professions Code Section 22451(b). (Italics in
original, bracketed material added.)

6 As shown by the Report, the WCJ concluded that the evidence offered by CIS was insufficient to
7 show that it was the independent contractor of applicant's attorney in this this case, and that the
8 underlying purpose of the registration requirements of Business and Professions Code section 22450
9 would be defeated if applicant were allowed to claim the independent contractor exception under
10 Business and Professions Code section 22451(b). Neither of those conclusions is supported by the record
11 or the law.

12 DISCUSSION

13 As to the evidence offered by CIS, we find it sufficient to support a finding that it was an agent or
14 independent contractor of applicant's attorney at the time it provided the services underlying the lien
15 claim. The only fact CIS needed to prove in order to show that it was exempt from the Business and
16 Professions Code section 22450 registration requirement is that it was hired by applicant's attorney to
17 photocopy the documents. The exhibits received into the record establish that fact. Lien Claimant's
18 Exhibit 1 shows that CIS was hired as an independent contractor by applicant's attorney pursuant to work
19 orders placed by the attorney. Lien Claimant's Exhibit 2 shows that applicant's attorney understood and
20 intended to hire CIS as an independent contractor to photocopy the documents he identified.

21 Having concluded that the evidence is sufficient to show that CIS was hired as an agent or
22 independent contractor by a member of the State Bar to provide photocopying services, we turn to the
23 policy points raised by the WCJ in construing the Business and Professions Code section 22450.

24 The fundamental rule of statutory construction is to effectuate the Legislature's intent. (*DuBois v.*
25 *Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286, 289] (*DuBois*).)
26 "When interpreting any statute, it is well-settled that we begin with its words because they generally
27 provide the most reliable indicator of legislative intent." (*Smith v. Workers' Comp. Appeals Bd.* (2009)

1 46 Cal.4th 272, 277 [74 Cal.Comp.Cases 575, 578] (*Smith*) [internal quotation marks omitted].) “We are
2 required to give effect to statutes according to the usual, ordinary import of the language employed”
3 (*DuBois*, 5 Cal.4th at p. 388 [58 Cal.Comp.Cases at p. 289].) “If the language is clear and unambiguous,
4 there is ordinarily no need for judicial construction [and, therefore,] we presume the Legislature meant
5 what it said and the plain meaning governs.” (*Smith*, 46 Cal.4th at p. 277 [74 Cal.Comp.Cases at p. 578]
6 [internal quotation marks omitted]; see also *DuBois*, 5 Cal.4th at pp. 387-388 [58 Cal.Comp.Cases at p.
7 289].)

8 On its face, Business and Professions Code section 22451(b) plainly exempts “agents or
9 independent contractors” of a “member of the State Bar” from the Business and Professions Code section
10 22450 registration requirements. The question is whether the WCJ correctly construed Business and
11 Professions Code section 22451(b) to also require that the agent or independent contractor post a bond or
12 otherwise demonstrate financial responsibility in order to obtain the statutory exemption.

13 Nothing in the statute or in case law supports the WCJ’s view as expressed in his Report that CIS
14 was required to show that “*at the time of the services*, the member of the State Bar engaged the
15 photocopier under circumstances which include financial and criminal responsibility for the actions of
16 the photocopier in connection with the services.” (Emphasis in original.) To the contrary, the WCJs’
17 creation of an additional requirement for obtaining a Business and Professions Code section 22451(b)
18 exemption is precluded by the rules of statutory construction set forth above. (*DuBois, supra; Smith,*
19 *supra.*) The wisdom of the Legislature in allowing the exemption is not before the WCAB. Instead, we
20 apply the statute *as written* by the Legislature, and we are not free to impose new or additional
21 requirements beyond those set forth in the statute.

22 As Business and Professions Code section 22451(b) is written, an agent or independent contractor
23 hired by a member of the State Bar to photocopy documents is exempt from the registration requirement
24 of Business and Professions Code section 22450. CIS proved that it is entitled to that exemption with
25 regard to the photocopying services it performed at the direction of applicant’s attorney.

26 The WCJ’s finding that CIS was not an “independent contractor” within the meaning of Business
27 and Professions Code Section 22451 at the time the services at issue were rendered is reversed along with

1 the order disallowing the CIS lien. A new decision is entered finding that CIS was an agent or
2 independent contractor of applicant's attorney when it provided the photocopying services and awarding
3 it a fee in the \$1,000 amount that was stipulated to be reasonable.

4 For the foregoing reasons,

5 **IT IS ORDERED** that the petition of lien claimant California Imaging Solutions for
6 reconsideration of the July 14, 2015 Joint Findings And Order of the workers' compensation
7 administrative law judge is **GRANTED**.

8 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'
9 Compensation Appeals Board that the July 14, 2015 Joint Findings And Order of the workers'
10 compensation administrative law judge are **RESCINDED**, and the following are substituted in their
11 places:

12 **FINDINGS OF FACT**

13 1. Applicant's claims of industrial injury to multiple body parts while working for defendant as a
14 machine operator from December 2006 to December 2008 (ADJ483398), on April 12, 2007
15 (ADJ7117818), and on June 19, 2007 (ADJ7117817) were previously settled by compromise and release
16 with a lump sum payment of \$10,000, as approved by order of a workers' compensation administrative
17 law judge on September 17, 2012.

18 2. Lien claimant San Diego Imaging, Inc., doing business as California Imaging Solutions, was
19 acting as an agent or independent contractor for applicant's attorney who is a member of the State Bar on
20 the dates it provided the photocopying services underlying its lien claim and for that reason it was
21 exempted by Business and Professions Code section 22451(b) from the registration requirement of
22 Business and Professions Code section 22450 in providing those services.

23 3. The reasonable value of the services provided by lien claimant San Diego Imaging, Inc., doing
24 business as California Imaging Solutions in this case is stipulated to be One Thousand (\$1,000.00)
25 Dollars, and that is the amount allowed on the lien claim.

26 //

27 ///

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that lien claimant San Diego Imaging, Inc., doing business as California Imaging Solutions shall recover One Thousand (\$1,000.00) Dollars from defendant in full satisfaction of its lien claim herein and as the reasonable value of the photocopying services it provided.

WORKERS' COMPENSATION APPEALS BOARD

I CONCUR,

JOSE H. RAZO

DEIDRA E. LOWE

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEP 25 2015

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

CALIFORNIA IMAGING SOLUTIONS
JOHN MOLONEY
HINDEN & BRESLAVSKY
GOLDMAN, MAGDALIN & KRIKES
STOCKWELL HARRIS

JFS/abs